

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION R2-2006-0086

To amend the Water Quality Control Plan for the San Francisco Bay Region
to Adopt Site-Specific Objectives for Cyanide
for San Francisco Bay and an Implementation Plan

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board), finds that:

1. An updated Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) was adopted by the Water Board on January 21, 2004, approved by the State Water Resources Control Board (State Board) on July 22, 2004, and approved by the Office of Administrative Law (OAL) on October 4, 2005.
2. The proposed Basin Plan Amendment, including specifications on its physical placement in the Basin Plan, is set forth in Exhibit A hereto. The proposed Basin Plan Amendment consists of the following: (a) adoption of marine site-specific water quality objectives (SSOs) for cyanide in all segments of San Francisco Bay; (b) adoption of an implementation plan to achieve and maintain the SSOs, including requiring mandatory effluent limits under the "Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California" (SIP) for all municipal wastewater dischargers and select industrial dischargers and the selection of dilution credits for shallow water dischargers to be used to compute water quality-based effluent limits in permits; and (c) minor clarifications to Chapter 4 of the Basin Plan to make it clear that the implementation plan for the SSOs for copper and nickel for Lower South San Francisco Bay requires mandatory effluent limits. All of the above are regulatory changes with the exception of the minor clarification of Chapter 4 relating to copper and nickel.
3. On December 22, 1992, the United States Environmental Protection Agency (USEPA) promulgated the National Toxics Rule (NTR) (amended on May 4, 1995) prescribing numeric water quality criteria for priority toxic pollutants, including cyanide, that apply to the San Francisco Bay.
4. On March 2, 2000, the State Board adopted the SIP, which among other things, establishes implementation provisions for priority pollutant criteria promulgated by USEPA, including the NTR.
5. The SIP authorizes the Water Board to adopt SSOs in lieu of the NTR criteria whenever the Water Board determines, in the exercise of its professional judgment, that it is appropriate to do so. Under the SIP, SSOs are appropriate if (a) a priority pollutant criterion or objective is not achieved in the receiving water, or a National Pollutant Discharge Elimination System (NPDES) permit holder demonstrates that they do not, or may not in the future, meet an existing or potential effluent limitation

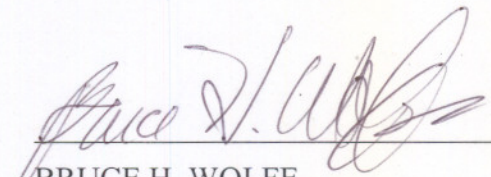
- based on the priority pollutant criterion or objective and (b) there is a demonstration that the discharger cannot be assured of achieving the criterion or objective and/or effluent limitation through reasonable treatment, source control and pollution prevention measures.
6. The proposed Basin Plan Amendment proposes SSOs in the San Francisco Bay of 2.9 µg/l for a 4-day average and 9.4 for a one-hour average for cyanide. These SSOs are necessary and appropriate for this waterbody because: (a) despite the performance of reasonable treatment, source control and pollution prevention measures, effluent limits based on the current NTR objectives are not being consistently met; (b) they are based on a recalculation of data from the national dataset and data from species (four west coast crab species) resident to San Francisco Bay, which is an USEPA-approved procedure for establishing SSOs.
 7. The proposed SSOs for cyanide in San Francisco Bay were derived through USEPA-approved methods, are based on sound scientific rationale, and are fully protective of the most sensitive aquatic life beneficial uses in San Francisco Bay, as required under 40 C.F.R. §131.11.
 8. The proposed SSOs are currently being met in San Francisco Bay and must be maintained. Therefore, the SSOs are supported by an implementation plan, which requires effluent limits for wastewater and selected industrial dischargers under the SIP, and contains strong pollution prevention and source control actions designed to prevent water quality degradation and ensure ongoing attainment of SSOs. The implementation plan also includes a selection of dilution credits for shallow water dischargers, calculated in accordance with the SIP, to be used to calculate water-quality based effluent limits in permits. This regulatory action is necessary to establish dilution credits in a consistent manner for all shallow water dischargers. The implementation plan satisfies the requirement for a program of implementation for achieving water quality objectives under CWC § 13242.
 9. The proposed SSOs for cyanide in the San Francisco Bay and the corresponding implementation plan comply with state and federal antidegradation requirements as set forth in the Staff Report dated December 4, 2006 (Staff Report).
 10. The Board has considered those CWC § 13241 factors to be considered when establishing water quality objectives such as SSOs, as set forth in the Staff Report.
 11. The Board has considered the impacts of the proposed Basin Plan Amendment on those affected by the proposed Basin Plan Amendment, namely publicly owned treatment works (POTWs) and industrial dischargers, including economic impacts. There are minimal economic impacts that would result from the proposed Basin Plan Amendment. Implementation of most of the implementation plan actions is already required of POTWs such that no additional expenditures are required as a result of the proposed Basin Plan Amendment.
 11. The scientific basis for the regulatory elements of the proposed Basin Plan Amendment was subjected to an independent, external peer review pursuant to the requirements of Health and Safety Code section 57004.

12. On August 18, 2006, the Water Board publicly noticed the proposed Basin Plan Amendment and distributed the proposed Basin Plan Amendment, a draft Staff Report, and Environmental Checklist in accordance with applicable state and federal environmental regulations (California Water Code [CWC] § 13244, title 23, California Code of Regulations, § 3775 et seq., and 40 CFR Part 25).
13. On October 11, 2006, the Water Board held a public hearing to consider the Basin Plan Amendment, after a 45-day public comment period.
14. On December 13, 2006, the Water Board held a second public hearing to consider the Basin Plan Amendment, including response to public comments on the amendment.
15. The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration. The Basin Plan Amendment package includes a Staff Report, an Environmental Checklist, an assessment of the potential environmental impacts of the Basin Plan amendments, and a discussion of alternatives. The Basin Plan Amendment, Environmental Checklist, Staff Report, and supporting documentation serve as a substitute environmental document under the Board's certified regulatory program. The Board has duly considered the Environmental Checklist, Staff Report and supporting documentation with respect to environmental impacts and finds that the proposed Basin Plan Amendment will not have a significant impact on the environment. The Board further finds, based on consideration of the record as a whole, that there is no potential for adverse effect, either individually or cumulatively, on wildlife as a result of the proposed Basin Plan Amendment.
16. The Basin Plan Amendment must be submitted for review and approval by the State Board, the Office of Administrative Law (OAL), and USEPA. Once approved by the State Board, the amendment is submitted to OAL and USEPA. The Basin Plan Amendment will become effective upon approval by OAL and USEPA. Additionally, for the SSOs to apply over the NTR criteria for cyanide, USEPA must also amend the NTR to remove the applicability of the NTR cyanide criteria in the San Francisco Bay, which amendment can and should be done concurrently with USEPA approval of the Basin Plan Amendment.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Water Board adopts the Basin Plan Amendment as set forth in Exhibit A hereto.
2. The Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Board in accordance with the requirement of CWC Section 13245.
3. The Water Board requests that the State Board approve the Basin Plan Amendment in accordance with the requirements of CWC Sections 13245 and 13246 and forward it to the OAL and USEPA for approval.
4. If, during the approval process, Water Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Water Board of any such changes.
5. Since the Basin Plan Amendment will involve no potential for adverse effect, either individually or cumulatively, on wildlife, the Executive Officer is directed to sign a Certificate of Fee Exemption for a "De Minimis" Impact Finding.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on December 13, 2006.



BRUCE H. WOLFE
Executive Officer